

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JOE PENA,

Plaintiff,

v.

No. CV 09-1015 CG

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

**ORDER GRANTING EAJA FEES**

**THIS MATTER** is before the Court on Plaintiff's *Motion and Memorandum for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412* ('Motion') (Doc. 25) and its accompanying attorney Affidavits (Doc. 25-1), filed on January 19, 2011. Defendant filed his response on February 4, 2011, and he does not oppose the Motion. (Doc. 26 at 1-2).

**IT IS THEREFORE ORDERED** that Plaintiff's *Motion and Memorandum for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412* (Doc. 25) is **GRANTED** and that Plaintiff Joe Ray Pena<sup>1</sup> is authorized to receive **\$6,834.51** in fees for payment to his attorney for services before this Court.<sup>2</sup>

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<sup>1</sup> See *Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) (requiring EAJA fees to be paid to the claimant).

<sup>2</sup> In the future, if Mr. Pena's counsel is also awarded attorney fees pursuant to 42 U.S.C. § 406(b), he shall refund the smaller award to Mr. Pena pursuant to *Gisbrecht v. Barnhart*. 535 U.S. 789, 796 (2002) ("Fee awards may be made under both [EAJA and § 406(b)], but the claimant's attorney must refund to the claimant the amount of the smaller fee." (internal quotation marks and alteration omitted)).

A handwritten signature in black ink, appearing to read "Carmen E. Garza", with a long horizontal flourish extending to the right.

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THE HONORABLE CARMEN E. GARZA  
UNITED STATES MAGISTRATE JUDGE  
Presiding by Consent